

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

SAMUEL SURLES,

Plaintiff,

v.

Case Number 07-13555-BC
Honorable Thomas L. Ludington

DONALD ANDISON, Resident Unit Manager,
Gus Harrison Correctional Facility, *et al.*,

Defendants.

**ORDER ADOPTING IN PART AND MODIFYING IN PART
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
AND VACATING ORDER OF REFERENCE**

This matter is before the Court on a report issued by Magistrate Judge Charles E. Binder on October 2, 2007, recommending that the Court transfer Plaintiff Samuel Surles' case to United States District Judge Gerald E. Rosen, pursuant to E.D. Mich. LR 83.11(b)(7), and vacate the order of reference to the magistrate judge. As of today's date, no party has filed any objections to the magistrate judge's report and recommendation.

The plaintiff's failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Federation of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

The Court, however, agrees with the magistrate judge's recommendation to transfer the case as a companion case to an earlier filed case, 05-74534-DT, *Surles v. Andison*, which proceeded before Judge Rosen. This Court does note that Judge Rosen denied Plaintiff's motion for reconsideration in the earlier case on the basis of an untimely filing, and, in light of the

recommended transfer of the case to Judge Rosen, this Court will defer to his characterization of the relationship between the instant case and Plaintiff's prior filings in the earlier case. To that extent, the Court will modify the magistrate judge's report and recommendation.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [dkt #6] is **ADOPTED IN PART** and **MODIFIED IN PART**, as described above. The order of reference to the magistrate judge [dkt #5] is **VACATED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: October 24, 2007

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on October 24, 2007.

s/Tracy A. Jacobs
TRACY A. JACOBS